

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42084

CF INDUSTRIES, INC. v. KANEB PIPE LINE PARTNERS, L.P.
and KANEB PIPE LINE OPERATING PARTNERSHIP, L.P.

Decided: October 13, 2004

In a decision served August 12, 2004, the Board ordered Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. (collectively, Kaneb), to reduce the rates charged to CF Industries, Inc. (CFI), for the pipeline transportation of anhydrous ammonia to the level the Board previously prescribed in CF Industries Inc. v. Koch Pipeline Company, L.P., STB Docket No. 41685 (STB served May 9, 2000), aff'd sub nom. CF Industries, Inc. v. STB, 255 F.3d 816 (D.C. Cir. 2001) (Koch). The Board also asked for more information to determine whether to vacate the prescription for future transportation, and established a procedural schedule for the submission of pleadings. Kaneb filed its initial pleadings on September 13, 2004. The procedural schedule was modified in decisions served on September 16, 2004, and September 28, 2004. Pursuant to those decisions, CFI's reply evidence became due (and was filed) on October 7, 2004, and Kaneb's rebuttal to CFI's reply is due on October 14.

In a separate proceeding (STB Docket No. 42081), Dyno Nobel Inc. (Dyno) filed a complaint with the Board on June 16, 2003, challenging Kaneb's rate increases on Dyno's traffic on three grounds: (1) that they violate a contractual arrangement whereby rate parity was to be maintained between Dyno's rates and the Board-prescribed rates charged to another shipper; (2) that they are discriminatory in violation of 49 U.S.C. 15505; and (3) that they are unreasonable in violation of 49 U.S.C. 15501(a). That complaint remains pending. On September 17, 2004, Dyno petitioned to intervene in this proceeding. Dyno maintains that the Board's forthcoming decision concerning whether or not to vacate the Koch prescription could have an adverse impact upon Dyno's own complaint against Kaneb, and that Dyno may be bound by the Board's ruling regarding the continuing effect of the Koch rate prescription.

On September 22, 2004, Kaneb replied in opposition to Dyno's petition. (CFI has not expressed a position to the Board on Dyno's request.) Kaneb argues that Dyno's attempt to intervene is untimely and that Dyno's interests are already fully protected in its own complaint challenging Kaneb's rate increases. Kaneb further argues that the Board should not allow Dyno to intervene in this proceeding because Dyno's rates are not themselves subject to the Koch prescription. Lastly, Kaneb claims that Dyno's involvement will unnecessarily complicate and delay this proceeding.

Under 49 CFR 1112.4, a request to intervene in a proceeding may be granted if: (1) the schedule for filing verified statements will not be unduly disrupted; and (2) the issues raised in the proceeding would not be unduly broadened. This case is in an unusual posture. The decision served on September 28, 2004, granting extensions of time for filing pleadings due to settlement negotiations between the parties, stated that the Board would address Dyno's intervention request if those negotiations did not prove fruitful. It now appears that the parties were unable to resolve their dispute. While allowing Dyno to intervene may affect the schedule here, it would not be unduly disruptive. In addition, Dyno's intervention would neither unnecessarily complicate this proceeding nor broaden the issues because its participation would be limited to addressing the issue of whether the factual and legal underpinnings of the Koch prescription remain valid. Accordingly, Dyno's intervention request will be granted. Dyno's reply to Kaneb will be due by October 20, 2004, and Kaneb will have until October 27, 2004, to file a rebuttal to that submission.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Dyno is granted leave to intervene in this proceeding.
2. Dyno's reply is due by October 20, 2004.
3. Kaneb's rebuttal to Dyno's submission is due by October 27, 2004.
4. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary